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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3476 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes

[illegible]

2. To be referred to the Reporter or not? - No

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - No

5. Whether it is to be circulated to the Civil Judge? - No

HEIRS & LEGAL REPRESENTATIVE OF RUSTOMJI ARAVAT FIADJI

Versus

COMPETENT AUTHORITY & ADDITIONAL COLLECTOR

Appearance:

Shri MR Shah, Advocate for the Petitioners
Shri T.H.Sompura, Assistant Government Pleader for
the respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/06/96

ORAL JUDGEMENT

The order passed by the Urban Land Tribunal at

Ahmedabad ('the Appellate Authority' for convenience) on 31st August 1995 in Appeal No. Vadodara-84 of 1986 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By the impugned order, the Appellate Authority dismissed the appeal filed against the order passed by the Competent Authority at Vadodara sometime in February 1986 declaring the holding of the deceased predecessor-in-title of the petitioners to be surplus by 7852 sq.mtrs.

The facts giving rise to this petition move in a narrow compass. One Rustomji Aravat Fiadji ('the deceased' for convenience) filed his declaration in the prescribed Form under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 ('the Act' for brief) with respect to his holding within the urban agglomeration of Vadodara. While his declaration was pending before the Competent Authority at Vadodara (respondent no.1 herein), he breathed his last on 8th May 1984. A copy of his death certificate is at Annexure.A to this petition. The petitioners claim to be his heirs and legal representatives. It however appears that they had no idea about pendency of the declaration before respondent no.1. It appears that respondent no.1 also remained ignorant and unmindful of the death of the deceased. The declaration filed by the deceased was processed by respondent no.1. He appears to have passed one order some time in February 1986 declaring the holding of the deceased to be in excess of the ceiling limit by 7852 sq.mtrs. It appears that the petitioners received one notice of hearing dated 10th February 1994 from the Appellate Authority with respect to Appeal No.Vadodara-84 of 1986. Its copy is at Annexure.B to this petition. Thereupon they made an application to the Appellate Authority that the appeal preferred by Purshottam styling himself as their Power of Attorney holder but no such Power of Attorney was given to him. They however prayed for supply of a certified copy of the impugned order of respondent no.1 together with a certified copy of the memo of appeal. A copy of their application of 25th March 1994 is at Annexure.B to this petition. It appears that they engaged an advocate and made written submissions with respect to the appeal proceeding. A copy of the written submissions is at Annexure.C to this petition. By the order passed on 31st August 1995 in the aforesaid appeal, the Appellate Authority dismissed it. Its copy is at Annexure.D to this petition. The aggrieved petitioners have thereupon approached this Court under Articles 226 and 227 of the Constitution of India for questioning its correctness.

It clearly transpires from a copy of the death certificate Annexure.A to this petition that the deceased breathed his last on 8th May 1984. It transpires from the Appellate order at Annexure.D to this petition that respondent no.1 passed his order under Section 8(4) of the Act sometime in February 1986 against the declarant who was dead on that day. It is a settled principle of law that an order in favour of or against a dead person is a nullity in view of the ruling of this Court in the case of RAHUBHA JIVUBHA AND ORS. vs. STATE OF GUJARAT, 1995(1) 36(1) GUJARAT LAW REPORTER, PAGE 805. In that view of the matter, the order of respondent no.1 would be a nullity.

It is unfortunate that the Appellate Authority has not taken into consideration this aspect of the matter. It is not in dispute that it was brought to his notice that the declarant was no longer alive on the date of the order of respondent no.1 as transpiring from the written submissions at Annexure.C to this petition. The Appellate Authority ought to have considered the order of respondent no.1 under challenge in appeal to be a nullity as it was against a dead person. Instead, the Appellate order has decided the case on merits and has affirmed a null and void order. The impugned Appellate order at Annexure.D to this petition cannot therefore be sustained in law.

In view of my aforesaid discussion, I am of the opinion that the impugned Appellate Order at Annexure.D to this petition cannot be sustained in law and it has to be quashed and set aside. Ordinarily, the matter will have to be remanded to the Appellate Authority for restoration of the appeal to file and for its fresh disposal according to law. However, since the order of respondent no.1 itself is a nullity, it would be desirable to remand the matter to respondent no.1 for restoration of the proceeding to file and for his fresh order according to law after serving a draft statement under Section 8 of the Act to the petitioners herein and after giving them an opportunity of hearing. Learned Advocate Shri Shah for the petitioners states at the Bar that the deceased was survived by the petitioners as his only heirs and legal representatives and there is no other heir or legal representative of the deceased except the petitioners.

In the result, this petition is accepted, the order passed by the Competent Authority sometime in February 1986 at Vadodara (respondent no.1 herein) as affirmed in appeal by the order passed by the Urban Land

Tribunal at Ahmedabad on 31st August 1995 in Appeal No. Vadodara-84 of 1986 is quashed and set aside. The matter is remanded to respondent no.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
